

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 February 2023

Public Authority: Ministry of Defence

Address: Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant requested information relating to correspondence between significant individuals about defence procurement issues. By the date of this notice the Ministry of Defence (MOD) had not issued a substantive response to this request.
2. The Commissioner's decision is that the MOD has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the MOD to take the following step to ensure compliance with the legislation.
 - The MOD must provide a substantive response to the request in accordance with its obligations under FOIA.
4. The MOD must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 5 October 2022, the complainant wrote to the MOD and requested information in the following terms:

"I am sending this request under the Freedom of Information Act.

Please provide a copy of all correspondence (sent and received) between

-The secretary of state

-Ministers of state

-The permanent secretary

and Jack Lopresti MP concerning defence procurement issues.

Please limit this request to electronic searches of department email accounts, except for the secretary of state and permanent secretary, including any letters sent in electronic form.

For the current secretary of state and permanent secretary, please also search any instant messaging accounts (departmental or private) and any private emails used for government business. Please confirm in your response in writing that you have completed these searches as required under ICO guidelines.

Please also list the titles of attachments to emails or messages within the scope of this request.

2) Please provide a record of all meetings and calls between ministers or the permanent secretary and Jack Lopresti concerning defence procurement issues.

Please provide

-A list of these meetings, including topics.

-A copy of the minutes recorded of these meetings

-A copy of briefings prepared ahead of these meetings for the minister concerned.

-A list of the titles of any documents considered at these meetings.

I am happy to limit my request to electronically held records.

Please provide information held from 1 January 2020 to date."

6. The MOD acknowledged the request on 26 October 2022. Despite assuring the complainant that a response would be provided within the statutory timeframe, no such substantive response has been issued.

Scope of the case

7. The complainant contacted the Commissioner on 4 January 2023 to complain about the MOD's failure to respond to their request.
8. The Commissioner has considered whether the MOD has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

Reasons for decision

9. Section 1(1) of FOIA states that:
 - "Any person making a request for information to a public authority is entitled –
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him."
10. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
11. On 10 January 2023 the Commissioner wrote to the MOD, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days.
12. Despite this intervention the MOD has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that the MOD did not deal with the request for information in accordance with FOIA. The Commissioner finds that the MOD has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with FOIA.

Right of appeal

14. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

15. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
16. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Michael Lea
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